

State of Alaska FY2005 Governor's Operating Budget

Department of Law Statehood Defense Component Budget Summary

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Component: Statehood Defense

Contribution to Department's Mission

The Statehood Defense unit of the Department of Law provides advice and representation to state agencies on issues raised by conflicts between state and federal jurisdiction.

Core Services

The Statehood Defense attorneys handle a variety of complex cases arising out of state/federal jurisdictional conflicts that will have a profound and lasting impact on management of Alaska's natural resources. The state frequently must defend against encroachment by the federal government into areas traditionally regulated by the state. The State of Alaska took title to all the lands underlying navigable waters within its borders at statehood; under the Equal Footing Doctrine, such lands pass to new states automatically, as a matter of constitutional right. However, in response to the United States' reluctance to recognize the state's title, Alaska has been forced to protect its title in court in several instances, including an original action in the United States Supreme Court to establish clear title to the tide and submerged land underlying marine waters in Southeast Alaska.

Because of the patchwork of land ownership in Alaska among the state, the United States, and private landowners, and because of the lack of public infrastructure, access is extremely important to the public. The Statehood Defense group works on RS 2477 rights-of-way, access in National Forests and across other federal land, ANCSA 17(b) and other easements, and the state periodically reviews proposed federal Public Use Management Plans to comment on public access issues. Statehood Defense attorneys also provide legal advice and assistance to the Governor's Office and state agencies on matters of federal Indian law.

The Statehood Defense unit provides ongoing legal advice to the Department of Fish and Game (ADF&G) as it works to implement dual management of subsistence resources, and closely monitors the actions of the Federal Subsistence Board. The Statehood Defense unit also works on issues arising under the Endangered Species Act, the Pacific Salmon Treaty, the Magnuson-Stevens Fishery Conservation and Management Act, and other federal laws to protect state fishery and wildlife resources and the state's role in managing them. The Statehood Defense unit frequently comments on and drafts amendments to bills before Congress on a wide range of resource related topics including amendments to the Alaska Native Claims Settlement Act (ANSCA), the Alaska National Interest Lands Conservation Act (ANILCA), and the Endangered Species Act. Statehood Defense attorneys also assist with state comments on federal proposals such as the Forest Service Roadless Initiative, and designation of new national monuments in Alaska.

FY2005 Resources Allocated to Achieve Results

| | | |
|---|-------------------|----------|
| FY2005 Component Budget: \$959,900 | Personnel: | |
| | Full time | 8 |
| | Part time | 0 |
| | Total | 8 |

Key Component Challenges

During FY2005, the Statehood Defense unit will continue representing the state in the case before the United States Supreme Court to quiet title to the submerged lands underlying the marine waters of the Tongass National Forest and Glacier Bay National Park. We expect to brief exceptions to the Special Master's recommended decision on summary judgment in the next year, and depending on the outcome, the case may go to trial in 2004 or 2005. The unit will work to protect and ensure access to state and private lands and on public waters across Alaska through assertions of RS 2477 rights-of-way, ANILCA access rights, and ownership of navigable waters. Statehood Defense attorneys will work with the Department of Natural Resources (DNR) and ADF&G to file with the Bureau of Land Management (BLM)

additional applications for recordable disclaimers of interest to navigable waters, and provide information to BLM that convince it to declare waterways navigable within the survey windows it is completing.

The Statehood Defense unit will monitor the ongoing federal rulemaking relating to application to Alaska's Tongass and Chugach National Forests of the national Roadless Rule. The unit will participate in the ESA process as it relates to Pacific salmon and ensure adherence to the Pacific Salmon Treaty. The unit will continue to closely monitor the federal subsistence program, assist ADF&G in preparation of state comments, and challenge actions by the Federal Subsistence Board when necessary. Attorneys will review and comment on proposed federal legislation to complete conveyances under ANCSA and ANILCA and the Alaska Native Allotment Act by 2009, and will review proposed federal public use management plans for federal lands. The unit will also continue to work on issues relating to assertions of tribal sovereignty that impact state interests.

Significant Changes in Results to be Delivered in FY2005

To achieve a more compact and flexible budget, the stand-alone Statehood Defense BRU is eliminated and its component is transferred to the Civil Division BRU in this budget. No changes in services provided will result.

Major Component Accomplishments in 2003

- Attorneys in the Statehood Defense unit achieved a favorable settlement in the state's suit against the United States over applicability of the Forest Service's Roadless Rule to Alaska's National Forests.
- Following review of the state's brief in support of summary judgement on the issue of ownership of submerged lands underlying marine waters in the Tongass National Forest, the United States conceded that the state has title to most of the lands in question.
- The state successfully requested the Federal Subsistence Board to reconsider a regulatory proposal restricting non-subsistence fishing.
- The state received a favorable decision denying a Native allotment application for a valuable archeological and historical site on Yukon Island.
- The state filed 5 applications with the Bureau of Land Management for recordable disclaimers of interest for lands underlying navigable waters.
- The state negotiated amendments to the North Anchorage Land Agreement to protect state interests in land and resources.
- The Statehood Defense unit has educated private property owners about public rights of access to public waterways.

Statutory and Regulatory Authority

AS 44.23.020

Contact Information

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Statehood Defense Component Financial Summary

All dollars shown in thousands

| | FY2003 Actuals | FY2004 Authorized | FY2005 Governor |
|--------------------------------|----------------|-------------------|-----------------|
| Non-Formula Program: | | | |
| Component Expenditures: | | | |
| 71000 Personal Services | 545.6 | 893.1 | 541.6 |
| 72000 Travel | 11.5 | 14.5 | 8.5 |
| 73000 Contractual | 486.0 | 303.3 | 390.9 |
| 74000 Supplies | 10.5 | 27.0 | 18.9 |
| 75000 Equipment | 6.7 | 0.0 | 0.0 |
| 76000 Land/Buildings | 0.0 | 0.0 | 0.0 |
| 77000 Grants, Claims | 0.0 | 0.0 | 0.0 |
| 78000 Miscellaneous | 0.0 | 0.0 | 0.0 |
| Expenditure Totals | 1,060.3 | 1,237.9 | 959.9 |
| Funding Sources: | | | |
| 1004 General Fund Receipts | 1,030.7 | 1,237.9 | 959.9 |
| 1007 Inter-Agency Receipts | 29.6 | 0.0 | 0.0 |
| Funding Totals | 1,060.3 | 1,237.9 | 959.9 |

Estimated Revenue Collections

| Description | Master Revenue Account | FY2003 Actuals | FY2004 Authorized | FY2005 Governor |
|-------------------------------------|------------------------|----------------|-------------------|-----------------|
| <u>Unrestricted Revenues</u> | | | | |
| None. | | 0.0 | 0.0 | 0.0 |
| Unrestricted Total | | 0.0 | 0.0 | 0.0 |
| <u>Restricted Revenues</u> | | | | |
| Interagency Receipts | 51015 | 29.6 | 0.0 | 0.0 |
| Restricted Total | | 29.6 | 0.0 | 0.0 |
| Total Estimated Revenues | | 29.6 | 0.0 | 0.0 |

**Summary of Component Budget Changes
From FY2004 Authorized to FY2005 Governor**

All dollars shown in thousands

| | <u>General Funds</u> | <u>Federal Funds</u> | <u>Other Funds</u> | <u>Total Funds</u> |
|---|----------------------|----------------------|--------------------|--------------------|
| FY2004 Authorized | 1,237.9 | 0.0 | 0.0 | 1,237.9 |
| Adjustments which will continue current level of service: | | | | |
| -PCN 03-0295 to Opinions, Appeals and Ethics | -147.4 | 0.0 | 0.0 | -147.4 |
| -Changes to Retirement and Other Personal Services Rates | 55.7 | 0.0 | 0.0 | 55.7 |
| -Statehood Defense Issues /Sec 62(b) CH 82 SLA 2003 P 108 L 25 (HCS CSSB 100 FIN) | -186.3 | 0.0 | 0.0 | -186.3 |
| FY2005 Governor | 959.9 | 0.0 | 0.0 | 959.9 |

**Statehood Defense
Personal Services Information**

| Authorized Positions | | | Personal Services Costs | |
|----------------------|------------------------------------|----------------------------------|-----------------------------------|------------------|
| | <u>FY2004</u> <u>Authorized</u> | <u>FY2005</u> <u>Governor</u> | | |
| Full-time | 9 | 8 | Annual Salaries | 510,726 |
| Part-time | 0 | 0 | Premium Pay | 0 |
| Nonpermanent | 0 | 0 | Annual Benefits | 196,968 |
| | | | <i>Less 23.47% Vacancy Factor</i> | <i>(166,094)</i> |
| | | | Lump Sum Premium Pay | 0 |
| Totals | 9 | 8 | Total Personal Services | 541,600 |

Position Classification Summary

| Job Class Title | Anchorage | Fairbanks | Juneau | Others | Total |
|------------------------|------------------|------------------|---------------|---------------|--------------|
| Assoc Attorney I | 1 | 0 | 0 | 0 | 1 |
| Attorney III | 2 | 0 | 0 | 0 | 2 |
| Attorney IV | 2 | 0 | 0 | 0 | 2 |
| Attorney VI | 1 | 0 | 0 | 0 | 1 |
| Law Office Assistant I | 1 | 0 | 0 | 0 | 1 |
| Paralegal II | 1 | 0 | 0 | 0 | 1 |
| Totals | 8 | 0 | 0 | 0 | 8 |